

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DESHAWN PIERRE SMITH,

Defendant-Appellee.

UNPUBLISHED

May 31, 2007

No. 268981

Wayne Circuit Court

LC No. 05-006223-01

Before: Meter, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying a motion for reconsideration of the court's decision to dismiss the case with prejudice. We reverse and remand for reinstatement of the charges against defendant. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession of 50 grams or more but less than 450 grams of cocaine, MCL 333.7403(2)(a)(iii), felon in possession of a firearm, MCL 750.224f, and carrying a concealed weapon in a vehicle, MCL 750.227. Plaintiff also sought sentence enhancement pursuant to the third habitual offender statute, MCL 769.11.

A jury trial commenced, but during voir dire, the prosecutor received a note. After a discussion at the bench, the trial court excused the prospective jurors, telling them that their services would not be needed in the matter. The prosecutor revealed that she had been informed that the evidence in the case had been destroyed. Defendant moved to dismiss. The trial court granted defendant's motion adding that the case would be dismissed "with prejudice."

Shortly thereafter, plaintiff moved for reconsideration and reinstatement of the charges. The motion indicated that the narcotics evidence had not been destroyed; the assertion to the contrary resulted when the wrong lockseal number was entered into the computer in the property division. The motion acknowledged that the weapon found in defendant's vehicle had been destroyed. The motion emphasized that jeopardy had not attached because the jury had not been sworn when the case was dismissed.

The trial court held a hearing and denied the motion for reconsideration. Initially, the trial court expressed frustration with the layers of bureaucracy with which courts had to deal. Thereafter, the trial court stated that it would not reinstate the case because it believed that each

party should get “one bite at the apple, and I mean just one.” Furthermore, the trial court asserted that it did not see how the prosecution could win the case even though the prosecutor had “all that silly paperwork, people get real suspicious.”¹

The Double Jeopardy clauses of the United States Constitution and the Michigan Constitution provide that an accused may not be put in jeopardy twice for the same offense. US Const, Am V; Const 1963, art 1, § 15. Jeopardy attaches when a jury is selected and sworn. *People v Grace*, 258 Mich App 274, 279; 671 NW2d 554 (2003). A double jeopardy claim presents a question of law that is reviewed de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

A trial court’s decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *People v Walters*, 266 Mich App 341, 350; 700 NW2d 424 (2005).

We reverse the trial court’s decision denying the motion for reconsideration, and remand this case to the trial court with instructions that the charges against defendant be reinstated. In denying the motion for reconsideration, the trial court did not directly address the prosecution’s assertion that jeopardy had not attached at the time the case was dismissed. Rather, the trial court expressed frustration with bureaucracy, and dismissed the case on the ground that the prosecution had had its “one bite at the apple.”

The case was dismissed on the legitimate, albeit mistaken, belief that the relevant evidence had been destroyed and plaintiff was unable to proceed. Essentially, the case was dismissed for manifest necessity. Had jeopardy attached at that point, retrial would not have been precluded. See *Grace*, *supra* at 280. Jeopardy had not attached in this case; therefore, reinstatement of the charges is not barred on double jeopardy grounds. *Id.* at 279.

Furthermore, the trial court abused its discretion by denying plaintiff’s motion for reconsideration and reinstatement of the charges. The trial court’s frustration with bureaucracy might be understandable, but the error made in the property division that lead to erroneous information being given to the prosecutor certainly appears to have been inadvertent. We conclude that under the circumstances, the trial court abused its discretion by denying the motion for reconsideration and refusing to reinstate the charges against defendant.

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

¹ The trial court was referring to the prosecutor’s exhibits, i.e., a lab sheet and an evidence receipt, that established that an error had occurred and that the cocaine seized from defendant still existed.